

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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June 6, 2001

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GSBCA 15367-RELO

In the Matter of ROBERT J. LAND

Robert J. Land, Hickory, NC, Claimant.

J. Patrick O'Toole, Director, Division of Travel Management, Social Security Administration, Baltimore, MD, appearing for the Social Security Administration.

**WILLIAMS**, Board Judge.

Claimant challenges the agency's determination that his household goods weighed in excess of 18,000 pounds, claiming that crating materials should not have been included in the weight. In addition, even if claimant's household goods weighed over 18,000 pounds, claimant contends that he should not be responsible for paying the excess charges since the moving company did not advise him what the excess moving or storage costs would be. Because claimant has not established that the agency's determination of the net weight of his household goods was in error and has not established any legal basis for the Government or the carrier to pay the charges for the excess weight, we deny the claim.

## Background

Claimant, Robert J. Land, an employee of the Social Security Administration (SSA), was transferred from Fayetteville, North Carolina, to Hickory, North Carolina, with an effective date of March 12, 2000, in conjunction with his promotion to the position of district manager. In February 2000, SSA contracted with Prudential Relocation to provide relocation services for claimant. According to SSA, Mr. Land was given a copy of the "Employee's Services Guide" as part of the relocation information package provided to him by Prudential Relocation. This guide specified the 18,000-pound household goods limitation. In addition, SSA's financial management manual, which was available to all SSA employees, specified that "the maximum weight of household goods that may be transported at Government expense is limited to 18,000 pounds for all employees."

Because claimant's wife was hospitalized, their move was delayed. On March 31, 2000, claimant informed Prudential Relocation that he had an offer on his house and would need to arrange for a move during the last week in April. The transportation coordinator for

Prudential Relocation claims that he verbally advised claimant on April 10, 2000, of the 18,000-pound weight limitation and of claimant's responsibility to pay for any charges in excess of the limitation, as he does for all transferees during their initial counseling. On April 11, 2000, claimant was notified that Prudential Relocation had selected Crowfutt and Smith Moving and Storage, Inc. (Crowfutt) to move and store claimant's household goods. On April 13, claimant arranged for the packing to occur on April 24 through 25 with loading taking place on April 26. Crowfutt's affiliate in Fayetteville, North Carolina, surveyed the household goods on April 15. The affiliate's president and chief executive officer advised that "due to the ornate nature of the frames on claimant's paintings and mirrors and decorative woodwork on his casegoods" he would recommend that some items be crated for safe handling and protection in storage.

On April 17, Crowfutt's representative advised claimant that the survey had revealed that there appeared to be an estimated 20,000 pounds of household goods and that there was an 18,000-pound limitation on what the Government would pay. According to claimant, this was the first time he was advised that the weight of his household goods exceeded 18,000 pounds. Although claimant requested a cost estimate attributable to the excess weight, none was provided.

On April 25, D&D Service Company arrived and began preparing crating material using lumber and plywood to construct hard-sided crates. Twenty-seven items were crated -- a grandfather clock, sixteen pictures, five mirrors, two desk tops, two crates of ceramic flower pots, and one marble top. On April 25, claimant was again advised that Crowfutt would bill him for the cost if the weight exceeded 18,000 pounds and that the weight of the protective crating would be included. He asked again what the cost would be, but no cost estimate was provided.

The van was loaded on April 26, 2000, and claimant's household goods were taken from Fayetteville to be placed in storage in Raleigh, North Carolina.

On May 8, 2000, Crowfutt advised claimant that the weight of the shipment of his household goods was 21,360 pounds. Claimant again asked what the cost would be and was told that it had not yet been calculated. He called back again on May 9, May 11, and May 12 and received the same response.

On May 16, claimant was advised that his first bill would be for \$1072.76 to cover transportation (fifty-five miles) to the warehouse in Raleigh and storage for May. He was further advised that he would have a recurring monthly charge of \$218.40 while the furniture was in storage and that there would be a final delivery charge assessed when the furniture was delivered to Hickory, North Carolina, which is approximately 175 miles from Raleigh. Claimant estimated his total out-of-pocket cost would be approximately \$4883.18. Claimant contends that had he been informed in April of what the additional charges for the weight over 18,000 pounds would have been, he would have rented a truck and arranged for storage himself, thus limiting his out-of-pocket costs.<sup>1</sup>

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<sup>1</sup>Claimant filed a complaint with the Consumer Protection Agency of the North Carolina Attorney General's Office, claiming that the failure of Crowfutt to provide estimated cost information to him prior to the loading and transportation of his household goods was an unfair and deceptive trade practice. This matter is not before us, so we do not address it.

On May 18, claimant called Prudential Relocation, inquiring as to why the charge was so high for the 3360-pound overage. He was advised by the North Carolina Utilities Commission that the rate was \$19.85 per 100 pounds for weights over 1600 pounds. The Commission advised claimant that the charges appeared appropriate. On May 19, Prudential Relocation advised claimant that the charges were permissible based on a rate table, and were not negotiable. Claimant then inquired as to whether he could remove goods from storage to drop the weight below 18,000 pounds but learned that he would incur charges of \$50 to \$60 per manhour to have items removed from storage. On May 24, 2000, claimant contacted the president and chief executive officer of Crowfutt for a waiver or reduction of charges. On May 31, Crowfutt agreed to reduce the transportation charges to \$835.88 and advised that claimant would be assessed a charge of \$38 per crate to remove the goods from storage.

### Discussion

Statute limits the Government's payment of an employee's moving expenses to 18,000 pounds net weight. The governing statute provides:

Under regulations prescribed under section 5738 of this title and when the head of the agency concerned or his designee authorizes or approves, the agency shall pay from Government funds—

. . . .

(2) the expenses of transporting, packing, crating, temporarily storing, draying and unpacking his household goods and personal effects not in excess of 18,000 pounds net weight.

5 U.S.C. § 5724(a) (1994 & Supp. V 1999).

The Federal Travel Regulation (FTR) provides, consistent with statute, that "the maximum weight of household goods that may be transported or stored at Government expense is limited to 18,000 pounds net weight for all employees." 41 CFR 302-8.2(a) (1999).

The regulation on "determining the net weight," 41 CFR 302-8.2(c), provides:

(1) Uncrated shipments. When household goods are shipped uncrated as in a household mover's van or similar conveyance, the net weight shall be that shown on the bill of lading or on the weight certificate attached thereto, which, under Interstate Commerce Commission (ICC) regulations, includes the weight of barrels, boxes, cartons, and similar materials used in packing, but does not include pads, chains, dollies, and other equipment needed to load and secure the shipment. When a noncommercial means of shipment is involved (see § 302-8.3(a)(3)), the ICC regulations shall apply for determining the net weight. When an employee's claim is based on constructive weight as authorized in paragraph (c)(4) of this section, the net weight shall be the weight as determined under that provision.

(2) Crated shipments. When property is transported crated, the net weight shall not include the weight of the crating material. The net weight shall be computed as being 60 percent of the gross weight. However, if the net weight computed in this manner exceeds the applicable weight limitation and if it is determined that, for reasons beyond the employee's control, unusually heavy crating and packing materials were necessarily used, the net weight may be computed at less than 60 percent of the gross weight.

(3) Containerized shipments. When special containers designed normally for repeated use, such as lift vans, CONEX transporters, and household-goods shipping boxes are used and the known tare weight does not include the weight of interior bracing and padding materials but only the weight of the container, the net weight of the household goods shall be 85 percent of the gross weight less the weight of the container. If the known tare weight includes interior bracing and padding materials so that the net weight is the same as it would be for uncrated shipments in interstate commerce, the net weight shall not be subject to the reduction. If the gross weight of the container cannot be obtained, the net weight of the household goods shall be determined from the cubic measurement on the basis of 7 pounds per cubic foot of properly loaded container space.

Under subsection (c)(1) of the regulation, the net weight for uncrated shipments such as claimant's "includes the weight of barrels, boxes, cartons and similar material used in packing, but does not include the pads, chains, dollies, and other equipment needed to load and secure the equipment." 41 CFR 302-8.2(c)(1). Claimant contends that this was a "crated shipment" under this regulation (subsection (c)(2)) because "unusually heavy crating and packing materials were necessarily used" and the net weight should not include the weight of the crating material.

The agency interprets this "crated shipment" section of the FTR to apply only to instances where the entire lot of household goods has been crated for shipment, not merely selected items. Applying the plain language of the regulation, we conclude that the agency is correct. Since most of claimant's household goods were shipped uncrated, the shipment is not a crated shipment. In Douglas V. Smith, GSBCA 14655-RELO, 99-1 BCA ¶ 30,171, the Board recognized that a shipment which included primarily uncrated goods and some crated goods (clocks and a glass table top) was an "uncrated shipment." The Board ruled that "[t]he net weight of an uncrated shipment is the weight shown on the GBL, including packing materials."

The FTR also provides:

If [HHG] in excess of the weight allowable under this regulation are shipped on a [GBL] . . . the employee shall promptly upon completion of the shipment pay the proper agency official for the excess cost. The excess cost shall be computed from the total charges according to the ratio of excess weight to the total weight of the shipment.

41 CFR 302-8.4(e)(2).

Thus, claimant is responsible for paying the charges related to the excess weight. Smith, 99-1 BCA at 149,298. As we recognized in Leroy Aaron, GSBCA 14311-RELO, 98-2 BCA ¶ 29,762, since the limit of 18,000 pounds is based on statute and regulation, the agency has no authority to waive the weight limit for Government reimbursement of shipment of household goods regardless of extenuating circumstances. See also Jack McGee, B-199303 (Aug. 22, 1980) (rejecting claim for adjustment of weight limit for weight of interior packing materials used in shipment). By regulation, the weight of the boxes and interior packing is included in the weight of the shipment, and the agency is not authorized to relieve claimant of responsibility for overweight allegedly arising from the weight of the boxes or packing.

Unfortunately, the fact that the moving company did not advise claimant sooner what the excess costs would be does not change this result. As the Board has recognized, even where there was an erroneous pre-move estimate of the weight, any costs attributable to the excess weight must be borne by the employee. Linda D. Brainard, GSBCA 14686-RELO, 98-2 BCA ¶ 30,104; Donald G. Fullmer, GSBCA 14123-RELO, 97-2 BCA ¶ 29,291; Deland L. Broten, GSBCA 13730-RELO, 97-1 BCA ¶ 28,961 .

#### Decision

The claim is denied.

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MARY ELLEN COSTER WILLIAMS  
Board Judge